

CHARMAINE SHAW
(Appellant)

v.

CUMBERLAND COUNTY SHERIFF'S DEPARTMENT
(Appellee)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Argument held: April 7, 2016
Decided: March 22, 2017

PANEL MEMBERS: Administrative Law Judges Elwin, Goodnough, and Jerome
BY: Administrative Law Judge Elwin

[¶1] Charmaine Shaw appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) granting her Petition for Award and awarding total incapacity benefits for two closed-end periods, but declining to award ongoing incapacity benefits. Ms. Shaw contends that the ALJ erred by not awarding ongoing benefits on the grounds that (1) Ms. Shaw unreasonably refused a bona fide offer of reasonable employment pursuant to 39-A M.R.S.A § 214 (Supp. 2016) when she resigned from her position with the County; and (2) the period of refusal had not ended. We disagree, and affirm the decision in all respects.

I. BACKGROUND

[¶2] Charmaine Shaw began working as a corrections officer for the Cumberland County Sheriff's Department in May of 2007. On October 17, 2009, Ms. Shaw suffered an injury when, while responding to a distress call, a heavy metal door swung shut on her right ankle. Ms. Shaw was taken to Maine Medical Center, where an x-ray revealed a fibular fracture. On October 23, 2009, Dr. Hoffman performed an internal reduction and fixation surgery, which involved inserting a plate and five screws. Ms. Shaw was on crutches following the surgery until December 22, 2009. While using the crutches, Ms. Shaw began to develop shoulder pain and numbness in her fingers and hands.

[¶3] Ms. Shaw was out of work from October 17, 2009, through November 24, 2009, when she returned to a light duty position at the County's probate court. She went out of work again on December 20, 2009, when her assignment at the probate court ended. She resumed another light duty position on March 3, 2010. The County paid Ms. Shaw incapacity benefits voluntarily and without prejudice during these periods. Dr. Hoffman released Ms. Shaw to full duty on March 18, 2010, and she resumed her position as a corrections officer on that day without restrictions.

[¶4] Ms. Shaw testified that she was having some difficulty with her ankle after she returned to work, and that some inmates observed her in pain after she came down some stairs at the jail.

[¶5] On April 16, 2010, Ms. Shaw was involved in a breach of security that became the subject of an internal affairs investigation. The jail administrator testified that in light of a previous disciplinary infraction, this potentially could have resulted in Ms. Shaw's termination. After Ms. Shaw discussed her situation with her union representative, she signed and submitted a resignation letter, effective April 23, 2010.

[¶6] The investigation into the April 16 incident had not yet been completed and no disciplinary action had been taken when Ms. Shaw resigned from the County. Ms. Shaw testified that she did not think that she would be terminated as a result of the April 16 incident, but felt unsafe and that she might be a liability to other officers in an emergency (because the inmates who had observed her having difficulty walking down stairs may have tried to take advantage of her weakened condition).

[¶7] Ms. Shaw thereafter began to experience persistent pain in her right ankle. On May 4, 2010, Dr. Hoffman restricted her to sedentary desk work. She was then referred to Dr. Asherman, who saw Ms. Shaw on August 4, 2010, and diagnosed her with chronic pain and possible reflex sympathetic dystrophy. Dr.

Asherman completed a Practitioner's Report indicating that Ms. Shaw had no work capacity. Ms. Shaw underwent a second surgery on her ankle on March 3, 2011, to remove the hardware that had initially been inserted.

[¶8] Ms. Shaw saw Dr. Matthews for the numbness and tingling in her hands in January of 2010. Dr. Matthews diagnosed Ms. Shaw with work-related bilateral carpal tunnel syndrome, and performed a left carpal tunnel release on December 2, 2010. Ms. Shaw's symptoms on her right side "dramatically improved" with medication, and Dr. Matthews noted that she was "not incapacitated" by them. She did not undergo surgery on her right side.

[¶9] Ms. Shaw filed her Petition for Award on September 20, 2010. Dr. Esponnette examined Ms. Shaw pursuant to 39-A M.R.S.A § 207 (Supp. 2016) on June 2, 2011. He concluded that Ms. Shaw's claim of significant incapacity due to her work injury was well supported by objective findings in his examination. Dr. Esponnette recommended that Ms. Shaw limit work to either eight hours per day three days per week, or five hours per day five days per week, with the following restrictions: sit frequently with the ability to elevate her leg as needed; stand and walk occasionally; climb stairs rarely with no ladder climbing; carry ten pounds occasionally; push/pull twenty pounds occasionally; avoid firm grasp, continuous manipulation of objects, and operation of vibratory machinery.

[¶10] At the time of the hearing, Ms. Shaw had not worked outside the home, and had not looked for work since resigning from the County. Ms. Shaw testified that she frequently takes care of her granddaughter, who was born after her resignation and who lives with her.

[¶11] The ALJ granted Ms. Shaw's petition in part, awarding two periods of total incapacity benefits for the recovery periods following her left carpal tunnel release in December 2010, and her second ankle surgery in March of 2011. He concluded, based on Dr. Esponnette's opinion, that at all other times Ms. Shaw had some limited work capacity. He noted that although Drs. Asherman and Matthews had completed Practitioner's Reports indicating that Ms. Shaw had no work capacity, in their depositions each testified that they essentially agreed with Dr. Esponnette's assessment.

[¶12] The ALJ also concluded that pursuant to section 214(1)(A), Ms. Shaw's voluntary resignation constituted a refusal of a bona fide offer of reasonable employment without good and reasonable cause. The ALJ further concluded that Ms. Shaw did not end the period of refusal, and thus was not entitled to any incapacity benefits during any period when she had a partial work capacity.

[¶13] Ms. Shaw filed a motion for further findings of fact and conclusions of law, which the ALJ granted. The ALJ issued an amended decision, but did not alter the outcome. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶14] The Appellate Division's role on appeal is "limited to assuring that the [ALJ's] factual findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted).

B. Application of 39-A M.R.S.A § 214(1)(A)

1. Refusal of Bona Fide Offer of Reasonable Employment

[¶15] Ms. Shaw contends that the ALJ erred by concluding that she refused a bona fide offer of reasonable employment without good and reasonable cause when she resigned from her position on April 23, 2010. Ms. Shaw further contends that if she did unreasonably refuse a bona fide offer of reasonable employment when she resigned from the County, her period of refusal ended as early as May 4, 2010, because she relied on her treating physicians' opinions that she had no work

capacity, and that reliance constituted good and reasonable cause to refuse the corrections officer job.

[¶16] Section 214(1)(A) provides:

If an employee receives a bona fide offer of reasonable employment from the previous employer or another employer or through the Bureau of Employment Services and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of the refusal.

[¶17] An existing employment relationship implicitly constitutes an ongoing “offer” of employment, thereby obviating the need for an employer to make a formal, affirmative “offer” of employment. *Holt v. School Admin. Dist. No. 6*, 2001 ME 146, ¶ 7, 782 A.2d 779. When an employee resigns from a current employment relationship, the employee, in effect, rejects the employer’s ongoing offer to come to work. *Id.* Ms. Shaw does not dispute that the corrections officer position was a bona fide offer of reasonable employment.

[¶18] The ALJ did not err in concluding that Ms. Shaw refused a bona fide offer of reasonable employment without good and reasonable cause when she resigned on April 29, 2010. The ALJ found that no doctor had restricted or limited her in any way as of April 23, 2010, that she did not tell anyone at the County that she could not perform her duties because of her ankle injury, and that her resignation letter did not say that she was resigning because she was unable to

perform her duties due to ankle problems. The ALJ made adequate findings regarding Ms. Shaw's resignation, and there is competent evidence in the record to support those findings.

2. Period of the Refusal

[¶19] Ms. Shaw contends that the ALJ erred when concluding that the period of the refusal had not ended. She contends that the period of refusal had ended as early as May 4, 2010, because her reliance on her treating doctors' opinions regarding her work capacity constituted good and reasonable cause to justify continued refusal of the offer.

[¶20] In *Loud v. Kezar Falls Woolen Mills*, 1999 ME 118 ¶ 6, 735 A.2d 965, the Law Court explained how an employee can end the period of the refusal:

The phrase "during the period of the refusal" establishes that the termination of benefits resulting from a refusal of work need not be permanent. As a matter of common usage, a period of refusal begins when an employee rejects an offer of employment, and ends when the employee communicates to the employer a willingness to accept the offer previously rejected.²

²Or when the employee can show good and reasonable cause to justify continued refusal of the offer, e.g., when the employee obtains higher paying reinstatement work elsewhere.

[¶21] The ALJ, in determining that the period of refusal had not ended, concluded that Ms. Shaw did not take some affirmative step to communicate to the employer a willingness to return to employment so that suitable work could be provided. In fact, the ALJ issued further findings evaluating Ms. Shaw's arguments

that she had indicated a willingness to return to work through her answers to Board ordered discovery. The ALJ found that the discovery answers did not indicate a willingness to return to work but rather expressed an inability to return to employment. This is a factual finding supported by competent evidence that cannot be reversed on appeal.

[¶22] Ms. Shaw also argues that the ALJ did not address an alternative method of ending the period of refusal set forth in *Loud*: that an employee can demonstrate good and reasonable cause to justify continued refusal with “e.g., proof that higher paying work had been obtained.” There has been no return to work in this case, but Ms. Shaw argues that the ALJ erred by not evaluating whether her reliance on her physician’s opinions that she was unable to return to work or to return to her regular job justified “continued” refusal.

[¶23] The ALJ, however, carefully considered the issue of the actual extent of Ms. Shaw’s incapacity and determined that she had a partial ability to return to work at all times that she was not incapacitated by surgery, contrary to some of the contemporaneous medical reports. We find no error in this assessment of the medical evidence or reliance on Dr. Esponnette’s assessment that Ms. Shaw had a partial work capacity. Thus, the issue raised by the employee, that she was justified in her continuing refusal because of medical opinions indicating no work capacity, was clearly considered by the ALJ who rejected the medical evidence she relied

upon.¹ In making this determination, the ALJ also noted that Ms. Shaw's failure to end her refusal deprived the employer of the opportunity to mitigate its obligation to pay benefits by offering her alternative employment. We conclude this finding is consistent with the purpose of §214(1)(A) and find no error.

The entry is:

The administrative law judge's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2016).

Attorneys for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
Donald M. Murphy, Esq.
MACADAM JURY, P.A.
45 Mallett Drive
Freeport, ME 04032

Attorney for Appellee:
Alison A. Denham, Esq.
DOUGLAS, DENHAM,
BUCCINA & ERNST
P.O. Box 7108
Portland, ME 04112-7108

¹ While the facts of this case do not support Ms. Shaw's reliance on the opinions of her physicians, this decision does not foreclose the possibility that an employee's reliance on a physician's opinion could justify a refusal of an ongoing offer of employment.